

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: FARM WINERIES

REC AUG 16 10 12 53

Type of Rule: Legislative Interpretive Procedural

Agency: Alcohol Beverage Control Commissioner

Address: State Capitol; Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

The rule should have no fiscal impact.

3. Objectives of these rules:

The rule explains and clarifies the regulation of farm wineries and includes information relative to licensing, advertising, license revocation and hearing.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There should be no economic impact on State government.

B. Economic Impact on Political Subdivisions; Specific Industries:
Specific groups of citizens.

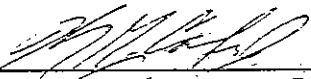
As a result of suggested changes, there should be no economic impact on political subdivisions, specific industries or groups of citizens.

C. Economic Impact on Citizens/Public at Large.

There should be no economic impact.

Date: _____

Signature of Agency Head or Authorized Representative



Harry G. Camper, Jr.
Commissioner



State of West Virginia
Department of Tax and Revenue

Charleston 25305

FILED

AUG 10 1990 12:53

GASTON CAPERTON
GOVERNOR

CHARLES O. LORENSEN
SECRETARY

August 10, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: HARRY G. CAMPER, JR.
ALCOHOL BEVERAGE CONTROL COMMISSIONER

LEGISLATIVE RULE TITLE: FARM WINERIES

HGC

1. Authorizing statute(s) citation: W. Va. Code §§ 60-2-16 and 29A-3-1 et seq.
2.
 - a. Date filed in State Register with Notice of Public Comment July 3, 1990
 - b. What other notice, including advertising, did you give of the hearing? None
 - c. Date of public comment period: July 3, 1990 through August 3, 1990
 - d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received _____
 - e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact) August 10, 1990
 - f. Name and phone number of agency person to contact for additional information: John Montgomery - 348-5330
3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:
 - a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided. N/A

- b. Date of hearing: N/A
- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor? N/A
- d. Attach findings and determinations and reasons:
Attached N/A



State of West Virginia
Department of Tax and Revenue

Charleston 25305

GASTON CAPERTON
GOVERNOR

FILED
1990 AUG 10 PM 12:53

CHARLES O. LORENSEN
SECRETARY

CONSENT TO FILE

August 10, 1990

To Whom It May Concern:

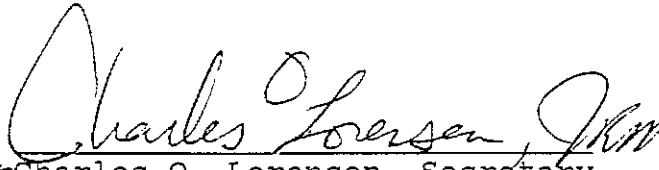
Title of Rule: FARM WINERIES

Title Number: 175

Series Number: 3

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 10th day of August, 1990.


for Charles O. Lorensen, Secretary
Department of Tax and Revenue

AGENCY APPROVED PROPOSED
WEST VIRGINIA LEGISLATIVE REGULATIONS
ALCOHOL BEVERAGE CONTROL COMMISSIONER
DEPARTMENT OF TAX AND REVENUE
TITLE 175
SERIES 3
1990

FILED

AUG 10 1990 10 21 12:53

FARM WINERIES

Filed: August 10, 1990

§ 175-3-1. General.

1.1 These regulations are agency approved proposed legislative regulations as defined in West Virginia Code § 29A-3-1 et seq.

1.2 Scope. - These agency approved proposed legislative regulations repeal and replace 175 C.S.R. 3 and are promulgated to establish the procedure for the licensing and operation of farm wineries.

1.3 Authority. - These agency approved proposed legislative regulations are authorized by West Virginia Code §§ 60-2-16 and 29A-3-1 et seq.

1.4 Filing date. - August 10, 1990.

1.5 Effective date. - These agency approved proposed legislative regulations become effective upon being approved by the Legislature.

1.6 Citation. - These agency approved proposed legislative regulations may be cited as 175 C.S.R. 3, § _____ (1990).

§ 175-3-2. Definitions. - As used in these regulations and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, and shall apply in the singular and in the plural.

2.1 "Advertisement" means any advertisement of alcoholic liquors through the medium of billboards, newspapers, magazines, or similar publications, except that such term shall not include: (1) any label affixed to any container of alcoholic liquors or any individual covering, carton or other wrapper of such container; or (2) any editorial or other reading matter in any periodical or publication or newspaper for the preparation or publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any person subject to these regulations.

2.2 "Alcohol Beverage Control Commissioner" or "ABCC" or "Commissioner" means the West Virginia Alcohol Beverage Control Commissioner (Administrator) or his delegate.

2.3 "Alcoholic liquor" means alcohol, beer, fortified wine and distilled spirits, and any liquid or solid capable of being used as a beverage, but shall

not include wine with an alcohol content of fourteen percent (14%) or less by volume, include nonintoxicating beer or nonintoxicating beverages.

2.4 "Bottle" and "Container" means any bottle or container authorized by this regulation for packaging wine for sale at retail.

2.5 "Department" shall mean the West Virginia Department of Tax and Revenue.

2.6 "Distilled spirits" means ethyl alcohol, ethanol or spirits of wine, including all dilutions and mixtures thereof, from whatever source or by whatever process produced, for beverage use, and shall include, but not be limited to, natural spirits, whiskey, brandy, rum, gin, vodka, cordials and liqueurs. Any alcoholic beverage containing more than 24% of alcohol by volume shall be deemed to be distilled spirits.

2.7 "Distributor" means any person whose principal place of business is within the State of West Virginia, and who is engaged in selling or distributing wine to retailers or private wine restaurants and selling or distributing port, sherry and madeira wines to wine specialty shops under authority of West Virginia Code article 60-8 and actually maintains a warehouse in this State for the distribution of wine.

2.8 "Farm winery" means an establishment where in any year fifty thousand (50,000) gallons or less of wine is manufactured exclusively by natural fermentation from grapes, other fruit or honey, with twenty-five percent (25%) of such raw products being produced by the owner of such farm winery on the premises of that establishment, and no more than twenty-five percent (25%) of such produce originating from any source outside this State: Provided, That a farm winery may include one off-farm location: Provided, however, That the owner of a farm winery may provide to the Commissioner evidence, accompanied by written findings by the West Virginia Agriculture Commissioner in support thereof, that the owner has planted on the premises of the farm winery young non-bearing fruit plants. The Commissioner may grant permission for one off-farm location in an amount equal to that reasonably expected to be produced when the non-bearing fruit plants planted on the farm winery come into full production. The length of time of the permission to use an off-farm location shall be determined by the Commissioner after consultation with the Agriculture Commissioner.

2.9 "Fortified wine" means any wine to which brandy or other alcohol has been added and includes dessert wines which are not fortified and any wine containing greater than fourteen percent (14%) alcohol by volume: Provided, That fortified wine may include wine with an alcohol content greater than fourteen percent (14%) if such alcohol content is derived solely from fermentation and no brandy or other alcohol has been added.

2.10 "Intoxicated" means having ones faculties impaired by alcohol or other drugs to the point where physical or mental control or both are markedly diminished.

2.11 "Licensed retailer" means the person licensed in accordance with West Virginia Code article 60-3, 60-3A or 60-8 to sell wine at retail to the general public.

2.12 "Manufacture" means to ferment, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor or wine.

2.13 "Manufacturer" means any person engaged in the manufacture of any alcoholic liquor or wine, and among others includes a producer, bottler, importer, wholesaler, or winemaker.

2.14 "Original package" means any closed or sealed container or receptacle used for holding alcoholic liquor or wine.

2.15 "Person" means any individual, partnership, joint stock company, business trust, association, corporation or other form of business enterprise, including a receiver, trustee or liquidating agent.

2.16 "Private club" means a corporation or association licensed as a private club in accordance with West Virginia Code article 60-7.

2.17 "Private wine restaurant" means a restaurant which: (1) Is a partnership, limited partnership, corporation, unincorporated association or other business entity which has as its principal purpose the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of West Virginia Code article 60-8 as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when such sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues paying members and their guests while in the company of a member, and does not admit the general public.

2.18 "Public place" means any place, building or conveyance to which the public has, or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies, and corridors of hotels and any highway, street, lane, park or place of public resort or amusement: Provided, That the term "public place" shall not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of West Virginia Code Chapter 60 to sell alcoholic liquors for consumption on the premises.

2.19 "Retail liquor store" means a store established and operated under the authority of either West Virginia Code article 60-3 or West Virginia Code article 60-3A for the sale of alcoholic liquor in the original package for consumption off the premises.

2.20 "Sale" means any transfer, exchange or barter in any manner or by any means, for a consideration, and shall include all sales made by a principal, proprietor, agent or employee.

2.21 "Selling" shall include solicitation or receipt of orders, possession for sale, or possession with intent to sell.

2.22 "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar, and includes, but is not limited to, still wines, champagne and other sparkling wines, carbonated wines, imitation wines, vermouth, cider, perry, sake, port, sherry, maderia or other product offered for sale or sold as wine containing not less than seven percent (7%) nor more than twenty-four percent (24%) alcohol by volume: Provided, That for purposes of these regulations, wine includes wine coolers and similar beverages containing not less than one-half of one percent (.5%) nor more than seven percent (7%) alcohol by volume.

2.23 "Wine tasting" means an activity where members of an organization meet at a farm winery or at an authorized off-farm location for the purpose of tasting and comparing samples of different wines.

§ 175-3-3. Licensure.

3.1 **License application.** - The application for license to operate a farm winery shall include the following:

- 3.1.1 The name of the applicant;
- 3.1.2 The address where the applicant will conduct its operations;
- 3.1.3 If the applicant be an individual or partnership, the names and addresses of all owners having ten percent (10%), or more, ownership interest;
- 3.1.4 If such applicant be an unincorporated association, the names and addresses of the members of its governing board;
- 3.1.5 If such applicant be a corporation, the names and addresses of its officers and directors and of all stockholders owning ten percent (10%), or more, of the common stock;
- 3.1.6 Arrest record, if any, of the applicant and its principals, officers, directors, owners, employees and manager/steward, including disposition of all such arrests;
- 3.1.7 West Virginia consumer sales tax identification number;
- 3.1.8 West Virginia business registration certificate number;
- 3.1.9 Application shall only be made on ABCC Form 200-FW. The form must be completed in its entirety and failure to compete all questions thereon shall constitute grounds for refusal to grant a license.
- 3.1.10 The application shall be signed by the applicant. In the case of a partnership, the application shall be signed by each of the partners: Provided, That in the case of a limited partnership, the applications shall be signed by each of the general partners and by each limited partner who owns ten percent (10%) or more of the capital or profits of such limited partnership. In the case of a voluntary association, all members owning ten percent (10%) or

more of the capital or profits shall sign. In the case of a corporation, the application shall be signed by an officer and under the seal of the corporation.

3.2 Refusal of license. - No license shall be issued to any applicant:

3.2.1 That submits an application for license that contains any false statement, and any statement found to be false after the granting of such license shall be grounds for revocation or suspension of such license;

3.2.2 Upon receipt of an application for a license, the Commissioner shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied qualify for a license and whether the licensing provisions of the law have been complied with, and shall investigate all matters connected therewith which may affect the public welfare, health and morals. The Commissioner shall deny an application for a license if either the applicant or the premises for which a license is applied do not qualify for a license. The applicant may appeal denial of the license, such appeal to be prosecuted in accordance with Section 175-3-7 of these regulations.

3.3 License not transferable. - A license issued under the provisions of 175 C.S.R. 3 shall be valid only for the person(s)/organization named thereon to operate a farm winery on the premises therein described and is not transferable.

3.4 Change of corporate directors or officers; issuance or transfer of corporate stock. - Each corporate licensee shall, within thirty (30) days of a majority change of the members of the board of directors, or a change in any corporate officers, or the issuance or transfer of shares of its stock which results in a person not previously approved owning ten percent (10%) or more of its stock, shall report to the Commissioner such information with respect to the new person as is required to be furnished by an applicant for a license.

3.5 Change in ownership; change in management. - Each licensee shall report any change in ownership of the business which results in a person not previously approved owning ten percent (10%) or more of its stock, or the change in the management control of the licensed establishment, and shall report to the Commissioner such information with respect to the new person as is required to be furnished by an applicant for a license.

3.6 Federal basic permit information. - Each applicant for a license authorizing a farm winery shall submit to the Commissioner a copy of the applicant's federal basic permit, as required under the Federal Alcohol Administration Act, including copies of all data, written statements, affidavits or other documents prepared in connection therewith. A copy of the federal basic permit shall accompany the request for application.

3.7 License application form. - The application for a license to operate a farm winery, ABCC Form 200-FW, is available from the West Virginia Alcohol Beverage Control Commissioner's office.

3.8 Certain personnel not to hold license. - No farm winery license shall be held by, or issued to, any person employed by the Alcohol Beverage Control Commissioner when the duties of such person have to do with the enforcement of

the Liquor Control Act or any other penal provisions of law of this State prohibiting or regulating the sale, use, possession or manufacture of alcoholic beverages.

3.9 **Bonded winery.** - A farm winery license shall be issued only to, or held by, an applicant qualified to operate or who is operating a winery or wine cellar bonded under the laws and regulations of the United States.

3.10 **Pricing.** - Wines produced by farm wineries shall be considered by the Commissioner to be a separate class of alcoholic liquor under the provisions of section nine, article three, chapter sixty of the West Virginia Code of 1931, as amended, for the purpose of establishing pricing.

§ 175.3.4. Operation of Farm Wineries.

4.1 **Application of Federal Alcohol Administration Act.** - The Commissioner hereby finds and declares that the adoption by his office, for its control of farm wineries, of the provisions of the laws, Rules and Regulations of the United States relating to the operations of wineries will:

4.1.1 Simplify the licensing of farm wineries in this State;

4.1.2 Improve enforcement of production and sanitation standards through better use of information obtained from federal sources; and

4.1.3 Aid interpretation of the farm winery law through use of federal judicial and administrative determinations and precedents.

The Commissioner does, therefore, declare that these regulations be construed so as to accomplish the foregoing purposes with specific regard to: (1) Standards of identity for wine; (2) labeling requirements for wine; (3) requirements for approval of labels of wine domestically bottled or packed; (4) advertising of wine; and (5) standards of fill for wine; and incorporates by reference all such provisions of the Federal Alcohol Administration Act and regulations adopted thereunder by the United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, in effect on the effective date of the Rules and Regulations herein, and as the same may be amended.

4.2 Licenses and fees.

4.2.1 Farm wineries must be licensed as such by the Commissioner. The wine manufactured at a farm winery may be served or sold or both served and sold.

4.2.2 Farm wineries are not required to be licensed as a distributor, retailer or private wine restaurant in order to engage in those business activities. However, a farm winery may not engage in simultaneous licensed business activities as a distributor and a retailer, as a distributor and a private wine restaurant, or as a retailer and a private wine restaurant.

4.2.3 A farm winery may be specially licensed for the retail sale of wine at any fair or festival endorsed or sponsored by the governing body of a municipality or county commission.

4.2.3.1 The special license may be issued for a term no longer than ten (10) consecutive days.

4.2.3.2 The application for the special license must be submitted to the Commissioner at least thirty (30) days prior to when wine will first be sold.

4.2.3.3 The special license authorizes the exhibit, wine tasting and selling of wine for consumption off the premises of the fair or festival.

4.2.4 The fees for authorized activities are as follows:

4.2.4.1 Farm winery - \$50.00 annually

4.2.4.2 Wine tasting - \$50.00 annually

4.2.4.3 Special license - \$25.00

4.3 **Inspection.** - The Commissioner or his agents shall have the authority to inspect, at any reasonable hour, the records, stocks and premises of the licensee to determine if the licensee is complying with all provisions of applicable laws and regulations. Such agents desiring to make such inspections shall identify themselves by suitable credentials. Any denial or interference with such inspections by the farm winery owner, his agents or employees shall be a violation of these regulations and will be reported as such.

Any evidence of a violation found during an inspection shall be seized and impounded and the same shall be admissible into evidence to prove such violation.

4.4 **Age for purchase or consumption of farm wine.** - No farm winery shall serve or sell farm wine to individuals below the age of twenty-one (21) years and any such individuals below the age of twenty-one (21) shall not be permitted to consume farm wine or any other alcoholic liquors on the premises of a farm winery. Additionally, a farm winery may not sell wine to any person who is visibly intoxicated.

4.5 **Hours for sale of farm wine.** - No farm winery licensee shall sell, give, serve or dispense farm wine, or permit the consumption thereof, on any licensed premises, or in any rooms directly connected therewith between the hours of one a.m. and one p.m. on any Sunday; nor shall any licensee sell, give or dispense farm wine, or permit the consumption thereof, on any licensed premises, or in any rooms directly connected therewith, between the hours of twelve midnight and ten a.m. on any week day. These prohibitions do not apply to those rooms in the structure which are used for the farm winery owners' normal, usual and customary residential activities.

4.6 **Wine tastings.** - A farm winery licensee may conduct wine tastings on its licensed premises, or in any rooms or areas directly connected therewith, or at an off-farm location, of wine produced or bottled by such licensee.

4.7 **Authorized sales.** - Every licensed farm winery may sell wine which it produced directly to consumers at the farm winery and at one off-farm winery location, through the ABCC warehouse, to any restaurant licensed under West Virginia Code § 60-8-3(k) to sell wine from a farm winery and to any person licensed under West Virginia Code Chapter 60 to sell wine at either wholesale or at retail.

4.7.1 A farm winery may ship wines from the farm winery without the bonding requirements of a transporter.

4.7.2 A person or licensee in a state which affords the wineries of this State equal reciprocal shipping privileges, may ship for personal use and not for resale, not more than two (2) cases per month to any adult resident in this State.

4.8 **Return by purchaser.** - A person, who has purchased wine from a licensed farm winery and has taken delivery of such wine within this State for delivery or use within or without this State, may return all or any portion of such wine to the licensed premises of such farm winery. To make such return, the purchaser need not obtain any license in this State, and may return the wine in a vehicle owned or controlled by such purchaser.

4.9 **Tax on sales.** - Licensees shall collect the tax imposed by the provisions of West Virginia Code § 60-3-9d and account for them in accordance with applicable regulations of the State Department of Tax and Revenue.

4.10 **Label registration.** - Every farm winery offering wine for sale under the authority of West Virginia Code article 60-8 is required to register with the Commissioner each label which the winery offers for sale in West Virginia. The farm winery is required to pay a fee of \$3.00 for each label so registered. No wine may be sold under the authority of West Virginia Code article 60-8 until it has been registered.

4.11 **Annual report.** - Every licensed farm winery shall report its total gallonage of wine produced or blended for the twelve (12) month period ending June 30 of each year or partial year. Such report shall be submitted by letter report within thirty (30) days after the end of such fiscal year.

4.12 **Blood alcohol chart.** - Each farm winery shall post in an open and prominent place within the licensed premises where it can be observed by customers a blood alcohol chart in the form prescribed by West Virginia Code § 60-6-24.

§ 175-3-5. Reserved For Future Use.

§ 175-3-6. Advertising.

6.1 **General prohibition.** - All advertising of wine which encourages intemperance, makes the consumption of alcoholic liquor appear to be glamorous, is lewd or obscene, induces minors to purchase, or tends to deceive or misrepresent, is hereby prohibited. Federal law, as interpreted by the ABCC, provides the following guidelines relative to acceptable and prohibited advertising of wine.

6.2 **Permissible media.** - A farm winery in West Virginia may advertise off premises in any media including, but not limited to billboards, newspapers, magazines and similar publications, radio and television.

6.3 **Application.** - No person engaged in business of a farm winery, directly or indirectly, or through an affiliate, shall publish or disseminate, or cause to be published or disseminated, any advertisement of the wine produced or manufactured at such farm winery, unless such advertisement is in conformity with these regulations: Provided, That these provisions shall not apply to the publisher or standardized outdoor advertising company of any billboard, newspaper, magazine or similar publication, unless such publisher or outdoor advertising company is engaged in business of a farm winery.

6.4 **Mandatory statements for advertising wine.**

6.4.1 **Responsible advertiser.** - The advertisement shall state the name and address of the farm winery. Street name and number may be omitted in the address.

6.4.2 **Class, type and distinctive designation.** - The advertisement shall contain a conspicuous statement of the class and type, or other designation of the product, corresponding with the complete designation which appears on the brand label of the product.

6.4.3 **Alcoholic content.** - The alcoholic content shall be stated in the manner and form in which it appears on the labels of the wine advertised.

6.5 **Lettering.**

6.5.1 **Conspicuousness of mandatory statements.** - Statements required by this part to be stated in any written, printed or graphic advertisement shall appear in lettering or type of a size, kind and color sufficient to render them both conspicuous and readily legible.

In particular:

6.5.1.1 Required information shall be stated against a contrasting background and in type or lettering which is at least the equivalent of eight (8) point type.

6.5.1.2 Required information shall be so stated as to appear to be a part of the advertisement and shall not be separated in any manner from the remainder of the advertisement.

6.5.1.3 Where an advertisement relates to more than one product, the required information shall appear in such a manner as to clearly indicate the particular products to which it is applicable.

6.5.1.4 Required information shall not be buried or concealed in unrequired descriptive matter or decorative designs.

6.6 **Prohibited statements.**

6.6.1 **Restrictions.** - An advertisement shall not contain:

6.6.1.1 Any statement that is false or misleading in any material particular. For example, the reproduction of medals or facsimiles of awards, when no medals or awards have been given or where the medals or awards were not given on a competitive or comparative basis are prohibited.

6.6.1.2 Any statement that is disparaging of a competitor's product.

6.6.1.3 Any statement, design, device or representation which is obscene, lewd or indecent.

6.6.1.4 Any statement, design, device or representation of, or relating to, analyses, standards or tests, irrespective of falsity which is likely to mislead the consumer. For example, an advertisement may not contain a statement such as "Analyzed by the _____ laboratory and found to be pure and free from deleterious ingredients," or "Tested and approved. Signed by the _____ Research Institute."

6.6.1.5 Any statement, design, device or representation of, or relating to, any guaranty, irrespective of falsity, which is likely to mislead the consumer.

6.6.1.5.a Nothing in this section shall prohibit the use of any enforceable guaranty in substantially the following form:

"We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package."

Blank to be filled in with the name of person making guaranty.

6.6.1.6 Any statement that the product is produced, blended, made, bottled, packed or sold under, or in accordance with, any authorization, law or regulation of any municipality, county or state, federal or foreign government unless such statement is required or specifically authorized by the laws or regulations of such government; and if a municipal county, state or federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.

6.6.1.7 Any statement of bonded wine cellar and bonded winery numbers unless stated in direct conjunction with the name and address of the person operating such winery or storeroom. Statement of bonded wine cellar and bonded winery number may be made in the following form: "Bonded Wine Cellar No. _____," "Bonded Winery No. _____," "B.W.C. No. _____," "B.W. No. _____."

No additional reference thereto shall be made, nor shall any use be made, of such statement that may convey the impression that the wine has been made or matured under United States government or any state government supervision or in

accordance with United States government or any state government specifications or standards.

6.6.1.8 Any statement, design, device or representation which relates to alcoholic content or which tends to create the impression that a wine is "Unfortified" or has been "Fortified," or has intoxicating qualities, or contains distilled spirits (except for a reference to distilled spirits in a statement of composition where such statement is required by these regulations to appear as a part of the designation of the product).

6.6.2 **Statements inconsistent with labeling.** - The advertisement shall not contain any statement concerning a brand or lot of wine that is inconsistent with any statement on the labeling thereof.

6.6.3 **Curative and therapeutic effects.** - The advertisement shall not contain any statement, design or device representing that the use of any wine has curative or therapeutic effects, if such statement is untrue in any particular or tends to create a misleading impression. For example, advertisements may not contain statements such as "_____ is good for you" or "Conducive to well-being."

6.6.4 **Place of origin.** - The advertisement shall not represent that the wine was produced or processed by one who was not in fact the actual producer.

6.6.5 **Flags, seals, coats of arms, crests and other insignia.** - No advertisement shall contain any statement, design, device or pictorial representation of, or relating to, or capable of being construed as relating to the armed forces of the United States, or of the American Flag, any state flag or any emblem, seal, insignia or decoration associated with any such flag or the Armed Forces of the United States; nor shall any advertisement contain any statement, device, design or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to falsely lead the consumer to believe that the product has been endorsed, made or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family or individual with whom such flag, seal, coat of arms, crest or insignia is associated.

§ 175-3-7. Violations.

7.1 **Prohibited acts.** - The Commissioner may suspend or revoke any farm license for violation of any of the applicable provisions of chapter sixty of the West Virginia Code or of any lawful rule or regulation of the Commissioner, or for the following causes:

7.1.1 For conviction of the licensee or his agent or employee for a felony related to business operations of the licensee;

7.1.2 For making any false material statement in an application for license;

7.1.3 For assigning, transferring or pledging a license contrary to the Rules and Regulations of the Commissioner;

7.1.4 For selling farm wine to a wholesale or retail dealer who is not a holder of a proper ABCC license at the time of the sale;

7.1.5 For failure of the holder of a license to pay an excise tax together with any penalties imposed by the law relating thereto and for violation of any rule or regulation of the State Department of Tax and Revenue in pursuance thereof.

7.2 **Employment of minors.** - No person under the age of eighteen (18) years shall be employed for or permitted by any licensee to participate in any manner whatsoever in the serving, sale or delivery of wine.

7.3 **Imitation and substandard wine - application of these regulations.** - The production, importation or sale within this State of any product as, or under the designation of, wine, which fails to conform to the standards prescribed in these regulations, and by reference therefore to the Federal Alcohol Administration Act, and regulations duly promulgated thereunder, or of any wine fermented from raisins, dried fruits, or dried berries or of any imitation or substandard wine as hereinafter defined, is hereby prohibited.

7.4 **Coined names.**

7.4.1 The sale in this State of wines identified on labels or in advertisements by a type or brand designation which implies mixtures of wine for which standards of identity are established in these regulations, or which identifying type or brand designation resembles an established wine type name such as "Angelica," "Madeira," "Muscatel," "Port," "Sherry," "Tokay," "Sauterne," "Claret," "Burgundy," is hereby prohibited.

7.4.2 The sale in this State of wine or combinations of wine and other alcoholic beverages which contain on the label statement such as "Whiskey Wine," "Rum and Wine," "Gin and Wine," "Beer and Wine," or simulations of such combinations, is hereby prohibited.

7.5 **Containers.**

7.5.1 The sale of wine in any container originally designed for a product other than wine, or in any container the design or shape of which would tend to mislead the consumer as to the nature of the contents, is hereby prohibited.

7.5.2 The sale of wine in containers which have blown, branded or burned therein the name or other distinguishing mark of any person engaged in business as a wine producer, importer, wholesaler or bottler or any other person different from the person whose name is required to appear on the brand label, is hereby prohibited.

7.5.3 The capacity of containers for wine shall conform to standards of fill provided by regulations of the Bureau of Alcohol, Tobacco and Firearms.

§ 175-3-8. **Enforcement.**

8.1 **Samples required.** - Every farm winery licensee shall, upon demand of the Commissioner, furnish, without cost to the Commissioner, samples of any wines upon its premises for purposes of analysis.

8.2 **Suspension or revocation of license.** - The license of a farm winery may be suspended or revoked upon proof of violation of any of the provisions of these regulations, as provided by the laws of this State.

8.3 **Seizure of substandard and imitation wine.** - Imitation, substandard or misbranded wine offered for sale in violation of these regulations may be seized and disposed of, as provided by the laws of this State.

§ 175-3-9. Hearing and Appeal Procedure. - Whenever the Commissioner refuses to issue a license, or suspends or revokes a license, he shall enter an order to that effect, and cause a copy of the order to be served in person or by certified mail, return receipt requested, on the licensee or applicant.

9.1 Hearings.

9.1.1 Any applicant or licensee, as the case may be, adversely affected by such order shall have a right to a hearing thereon before the Commissioner, providing that demand in writing for such hearing is served upon the Commissioner within ten (10) days following the receipt by such applicant or licensee of the copy of said order. The service of such demand for a hearing upon the Commissioner shall operate to suspend the execution of the order with respect to which a hearing is being demanded; however, an order suspending a license because a distributor refuses or fails to keep the bond required by West Virginia Code § 60-8-18(b) will itself not be suspended by such service. The person demanding a hearing shall give security for the cost of such hearing in such form and amount as the Commissioner may reasonably require. If the person demanding such hearing does not prevail in such hearing, or upon judicial review thereof, the costs of such hearing shall be assessed against him by the Commissioner and may be collected by an action at law or other proper remedy.

9.1.2 The Commissioner shall immediately set a date for such hearing and notify the person demanding such hearing thereof, which hearing shall be held within thirty (30) days after receipt of said demand. At such hearing, the Commissioner shall hear evidence and enter an order supported by findings of facts which will affirm, modify or vacate the order which is the subject of the hearing. The order resulting from the hearing shall be final unless vacated or modified upon judicial review thereof.

9.1.3 Such hearing and the administrative procedure prior to, during and following the hearing shall be governed by and in accordance with the provisions of West Virginia Code article 29A-5.

9.2 Appeal procedure.

9.2.1 Any person adversely affected by an order entered following such hearing shall have the right of judicial review in accordance with the provisions of West Virginia Code § 29A-5-4.

9.2.2 The judgment of a circuit court reviewing the order of the Commissioner shall be final unless reversed, vacated or modified on appeal to the West Virginia Supreme Court of Appeals in accordance with the provisions of West Virginia Code article 29A-6.

9.2.3 Legal counsel and services for the Commissioner in all such proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the attorney general or his assistants and in any proceedings in any circuit court by the prosecuting attorney of that county as well, all without additional compensation.

§ 175-3-10. Severability.

10.1 **Severability.** - The sections and subsections of these regulations shall be deemed severable. Should any section or subsection be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of the State of West Virginia, then such opinion or enactment shall invalidate only that particular section or subsection of these regulations, and all other sections shall remain in full force and effect: Provided, That such remaining portions are not determined to be inseparable, and, to this end, these regulations are declared separable.

RESPONSE TO COMMENTS
FARM WINERY

FILED

Following are the responses to comments received relative to the regulations governing Farm Winery. The comment or concern expressed will be stated first followed by the agency's response. Where appropriate, comments relative to similar concerns will be combined.

COMMENT: Section 5, relating to sanitation, is overreaching and board and should be eliminated.

RESPONSE: The Alcohol Beverage Control Commissioner is in agreement with this comment and has eliminated in its entirety all of Section 5. The Health Department will be responsible for performing all inspections relating to sanitation. Therefore, all other comments relating to Section 5 will not be repeated.

COMMENT: Section 3.1.10 does not apply to farm wineries and should be deleted.

RESPONSE: The Alcohol Beverage Control Commissioner is in agreement with this comment and the subject section has been removed.

COMMENT: Section 4.5 relating to the prohibition from selling wine in any room directly connected to the farm winery is overly restrictive because many farm wineries are part of the winery owner's residence.

RESPONSE: The regulation has been amended in order that the owner of the farm winery may use and consume his own products in those rooms in the structure which are used for the owner's normal, usual and customary residential activities.

COMMENT: Section 4.10, which requires farm wineries to register their labels with the Commissioner and to pay a \$3.00 fee for each label so registered, should be eliminated.

RESPONSE: West Virginia Code § 60-8-28 requires farm wineries to register their labels with the Commissioner and to pay a fee of \$3.00 for the registration of each such label. Therefore, it is a matter of amending the statute as opposed to merely changing the regulation.

COMMENT: Section 2.3, which defines "alcoholic liquor" should not be included within the regulations as the regulations only relate to wine.

RESPONSE: "Alcoholic liquor" includes alcohol, beer, fortified wine and distilled spirits but it does not include wine with an alcohol content of fourteen percent (14%) or less by volume. West Virginia Code § 60-8-2 defines "fortified wine" as meaning any wine to which brandy or other alcohol has been added and includes dessert wines which are not fortified. As some of the wines which are manufactured by West Virginia farm wineries are labeled as dessert

wines, they therefore fall within the definition of a fortified wine and fortified wines are included within the definition of alcoholic liquors. As a result, the inclusion of the term "alcoholic liquor" is necessary to the regulation.

COMMENT: "Distilled spirits" are not the produce of farm wineries.

RESPONSE: "Distilled spirits" include, by federal definition, spirits of wine. Therefore, it is entirely possible that distilled spirits is completely relevant to farm wineries.

COMMENT: The term "distributor" is not relevant to farm wineries.

RESPONSE: A farm winery is not required to be licensed as a distributor, retailer or private wine restaurant to engage in those types of business activities. As a result, the definition of "distributor" must be included in order to determine what the business activity is comprised of.

COMMENT: The rule would seem to preclude the buying of grapes from West Virginia growers that do not have a winery.

RESPONSE: As a result of a typographical error, the definition of "farm winery" was incomplete. This definition has been corrected so that the owner is now able to purchase raw products from growers of grapes within the State.

COMMENT: The definition of "fortified wine" includes dessert wine but should not be so classified.

RESPONSE: West Virginia Code § 60-8-2 includes dessert wines which are not fortified within the definition of "fortified wine." Therefore, it is necessary to change the statute as opposed to changing the regulation.

COMMENT: The term "importer" for farm winery operations is inappropriate.

RESPONSE: The Alcohol Beverage Control Commissioner agrees and the term has been eliminated from the regulation.

COMMENT: The term "manufacturer" refers to alcoholic liquor but the product of the farm winery is excluded from this category.

RESPONSE: As discussed previously, the term "alcoholic liquor" may very well include the spirits of wine and, as a result, must be included within the definition of manufacture.

COMMENT: The term "original package" is inapplicable because it refers to the original package of alcoholic liquor.

RESPONSE: The term has been amended to include wine.

COMMENT: Sections 3.1.11, 3.1.7 and 3.1.6 should not be included.

RESPONSE: Section 3.1.6 requires the applicant for a farm winery to include on the application the arrest record, if any, of the applicant and its principals, officers, directors, owners, employees and manager/steward, including disposition of all such arrests.

Section 3.1.7 requires the applicant to include the number of employees.

Section 3.1.11 requires the application to be made upon the ABCC form.

While the Alcohol Beverage Control Commissioner is in agreement that there is no necessity for including the number of employees upon the license application and, as a result, that specific requirement had been removed from the regulation, the other two (2) items so listed are in fact still being required. Since wine, like beer and other alcoholic liquors is a regulated industry, it is necessary to know the arrest record and disposition of all such arrests of individuals who are participating in such activities. Additionally, the Alcohol Beverage Control Commissioner can see no reason to not require the farm winery application to be made upon a specified form.

COMMENT: The thorough investigation by the Alcohol Beverage Control Commissioner under Section 3.2.2 is merely a duplication of effort in that the federal government also allegedly performs a similar investigation.

RESPONSE: While it is possible that the federal government may perform an investigation, it is felt that all matters which may affect the public welfare, health and morals should be known by the Commissioner. As a result, the Commissioner is of the opinion that it is incumbent upon him to assure a thorough investigation does take place.

COMMENT: Section 3.6 seems to be redundant in that it requires a copy of the applicant's federal basic permit to be provided to the Alcohol Beverage Control Commissioner.

RESPONSE: The State does not intend to issue a license to an individual who does not have a federal basic permit. As a result, it is necessary for that individual to provide a copy of the permit in order to assure that approval from the State is obtained.

COMMENT: Section 3.9 might better reference the BATF regulations of the United States.

RESPONSE: Appropriate amendments have been made to the regulation.

COMMENT: Section 2.24, which defines "wine" should have a lower percentage (2%).

RESPONSE: The Alcohol Beverage Control Commissioner is in agreement insofar as a lower percentage of alcohol in wine is necessary and the regulation has been amended.

COMMENT: Section 2.25, which defines "wine tasting" is too narrow.

RESPONSE: West Virginia Code § 60-8-3(f) authorizes a retailer under West Virginia Code article 60-8 to organize a wine taster's club in order to have wine tastings. The wine tastings are to be attended only by duly elected or approved dues-paying members and their guests. Therefore, the definition within the regulation is not overly narrow; in fact, the definition is in keeping with the statutory section. As a result, this is another situation where the statute may need to be amended.

COMMENT: Section 4.2.4.2 which establishes an annual fee for a wine tasting license should be deleted.

RESPONSE: West Virginia Code § 60-8-3(b)(3) requires that an annual wine tasting license be obtained and that the fee be \$50.00 per year.

COMMENT: Section 6.3 which relates to advertising should state that any billboards in place prior to the adoption of this regulation need not be changed.

RESPONSE: The Alcohol Beverage Control Commissioner does not feel that such a change is necessary.

COMMENT: Section 7.2 prohibiting the employment of any person under the age of 21 should be changed to provide an exception for the immediate family of the owner of the farm winery.

RESPONSE: While the Alcohol Beverage Control Commissioner does agree to change the minimum age to that of a person of 18 years, it does not feel it is inappropriate for someone under that age to be able to sell or serve or deliver wine. To do so would place the farm winery in a position contrary to that of a retail liquor store.

COMMENT: Section 7.5.3 should be amended to include the Bureau of Alcohol, Tobacco and Firearms.

RESPONSE: The Alcohol Beverage Control Commissioner is in agreement and the regulations have been so amended.

COMMENT: Section 8.1 should be amended to require the Alcohol Beverage Control Commissioner to reimburse the farm winery for samples which are taken for purposes of analysis and to reimburse such farm winery within 15 days.

RESPONSE: The Alcohol Beverage Control Commissioner disagrees with this proposition. The analyses are necessary in order to assure public safety and welfare and, as a result, the Alcohol Beverage Control Commissioner should not have to pay a cost to perform this service.

COMMENT: An exemption from the license fee should be established for wine tastings which are exclusively for West Virginia produced wines.

RESPONSE: The license fee is required by statute and the Alcohol Beverage Control Commissioner cannot provide an exemption where none exist within the statute.

FISHER RIDGE

VINEYARD AND WINERY

RECEIVED

90 AUG -6 AM 9:45

W.V.A.B.C.
COMMISSIONER

418 Medical Arts Building
Charleston, West Virginia 25301
(304) 342-8702 or 345-2306

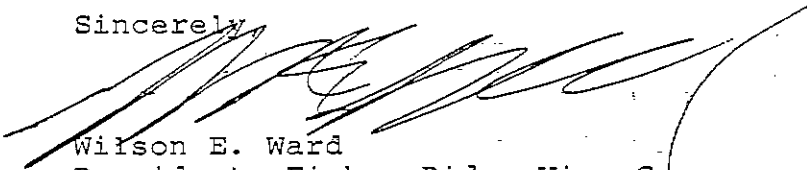
August 3, 1990

Commissioner Harry G. Camper
West Virginia ABCC
P O Box 4047
Charleston, WV 25304

Dear Commissioner Camper,

I am enclosing my comments regarding Emergency Rules for Farm Wineries. If you or your staff have any questions, please feel free to contact me.

Sincerely,



Wilson E. Ward
President, Fisher Ridge Wine Company

cc. Commissioner, Department of Agriculture
Office of Environmental Health Services

Enclosure

FISHER RIDGE

VINEYARD AND WINERY

418 Medical Arts Building
Charleston, West Virginia 25301
(304) 342-8702 or 345-2306

General.

These comments represent the opinions of the Fisher Ridge Wine Company only. They are not intended to represent the opinions of other members of the industry. Neither do other members of the industry such as the West Virginia Grape Growers, represent Fisher Ridge.

It is our opinion that the new regulations as reviewed by us are basically acceptable with the exceptions of the items listed in part two. However we were distressed at the limited amount of time available for review. It is our opinion that these regulations should not have been imposed as emergency regulations as no emergency exists. Furthermore, there is no excuse for not even informing members of the industry that emergency regulations were to be imposed.

Comments of the Fisher Ridge Wine Company on Emergency Regulations ABCC
Title 175 Series 3 1990

3.1.10 This item does not apply to Farm Wineries and should be deleted.

4.5 On line six, the words "or in any rooms directly therewith" should be deleted.

One must understand that many Farm Wineries are attached to the home of the proprietor, hence not even a glass of wine could be had with a meal after hours.

175-3-5. Sanitation

With one exception it is our opinion that the original sanitation regulations worked very well. The new regulations are vague and may even be interpreted in such a way as to make it impossible to function. Two options are acceptable. One is to delete all sanitation regulations until such time exists to completely rewrite them. The second is to leave the original sanitation rules in effect with one exception. That exception is 5.3.2.

Prohibition of recycling of wine bottles is unconscionable in this time. Furthermore it is the standard in both the soft drink and beer industry.

These comments are respectfully submitted with the intent of improvement of the regulations.

Sincerely,



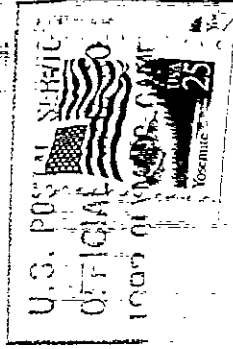
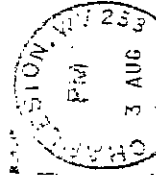
Dr. Wilson B. Ward

FISHER RIDGE

VINEYARD AND WINERY

418 Medical Arts Building
Charleston, West Virginia 25301
(304) 342-8702 or 345-2306

Commissioner Harry G. Camper
West Virginia ABCC
P O Box 4047
Charleston, WV 25304





West-
Whitehill
Winery, Ltd.

Route 1, Box 247CS
Keyser, West Virginia 26726

(304) 788-0035

RECEIVED

90 JUL 31 PM 3:22

W.VA.A.B.C.
COMMISSIONER

Mailing Address:
RD 1
Fisher, WV 26818

July 29, 1990

Mr. Harry Camper, Commissioner
Alcohol Beverage Control Commission
P.O. Box 4047
Charleston, W.Va. 25304

Dear Commissioner Camper:

I am in receipt of the proposed Emergency Rule for Farm Wineries which was filed on July 3 and to be effective on August 4, 1990.

I have reviewed these Rules and, with one exception, I have no problems with with the Rule as written. Of course, many of the provisions are subjective criteria and I may have questions at the time of their application and enforcement.

The one exception is Paragraph 5.9.1. This paragraph could be interpreted to require the washing of all grapes prior to crushing and pressing. If this was intended, this would be a substantial problem. In the wine industry, grapes are never cleaned or washed prior to crushing (of course, wineries will only accept grapes that are clean and free of rot and disease).

In fact, a requirement to wash the grapes would result in a serious reduction of grape and wine quality, and could run afoul of the Federal requirements on amelioration of wine.

I thank you for the opportunity to comment on this proposed Rule.

Sincerely Yours,

Stephen D. West
President

cc: Joseph Schock, Dept of Health
Robert Williams, Dept. of Agriculture

July 29, 1990

Alcohol Beverage Control Commissioner
P.O. Box 4047
Charleston, WV 25304

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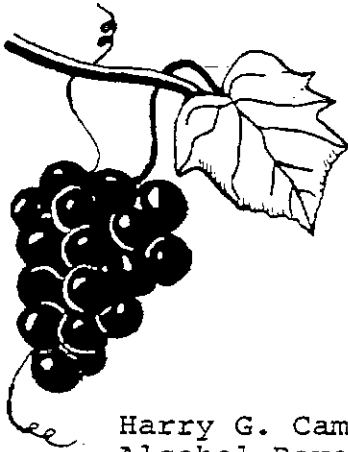
W.VA.A.B.C.
COMMISSIONER

Dear Gentlemen:

As I am looking the Emergency Rule for Farm Wineries, I am shocked of its unpractical, useless and harmful content to distroy the small enterprises, and put out useful taxpayers from their business. Our economy need less restrictions and more jobs, more people to pay taxes for the education and other public services. Let the Farmers alon to work, create, prosper and our whol Country will prosper with them, and dont cripple and paralyze them with sensles, rigid bureaucratic regulations. Grapegrowers are responsible useful farmers and dont need so many obstales, if they ~~ta~~ avoid one they will knock out the others. They need freedom and peace to accomplish their hard job. Treat them like Europeans do, the wine they can sell freely like potatoes apples, or other farmer product. The rigid buroecracy is dead of healthy economy. See it in Russia! We are already marching from democracy to the timocracy where the big moguls misleading the short sighted lawmakers and distroying the healthy economy in our Country. In Washington the Gallo and Taylor with unfair Occupational Tax ruining the small guys, and in Charleston The Georges Society excluding the small guys from the market. We the grower dont ask for any favor for ouself just the fair treatment from the big greedy moguls. Live and let live. How do you expect from us to pay \$ 50.00 for testing, \$ 25.00 special fees, if you restric us to sell our product? Why should we wash the grapes be- for the process to distroy the quality of our wine? Plus that cost mony and plus work. Why do we need more and more boaring buroecrats who try to paralyze the healthy economy? We should kepp our young rurar people in West Virginia, pay here taxes and not force them out from State to find a job, and the grapes growing, and winemaking is the long range answer for it. Dont kill us but suport any of enter- prizes in West Virginia, because West Virginian people are still honest, hard working people, if we let them, and educate them for selfsupport, and not to force the to the welfare, just because few shelfish big guy wantmake Franch coloni from the West Virginia.

Respectfully,

F.F. Androczi
Dr. Ferenc Frank Androczi
Professor Emeritus, and
Grapegrower, Melomel maker



West Virginia Grape Growers Association

101 Piterra Place
Purgitsville, W. Va. 26852

July 28, 1990

Harry G. Camper, Jr., Commissioner
Alcohol Beverage Control Commission
P.O. Box 4047
Charleston, WV 25304

Dear Commissioner Camper:

This letter is to: 1. submit comments to your emergency rule number 175 series number 3, and emergency rule number 175 series number 4; 2. request an extension of 180 days for comments, and 3. provide background information to assist you in efficient and economical interaction with farm wineries.

In a majority of cases farm wineries are agricultural enterprises usually operated as a family type farm supplying products of their agricultural efforts directly to the ultimate consumer. No known pathogen has been found to live in a solution with greater than 10 percent alcohol and a ph factor under 4.0. Farm winery wine is greater than 10 percent alcohol and lower than 4.0 ph. Even FDA on May 23, 1990 stated: "Wine is a very safe food product". Due to the fact that one of the 457 components in a wine product from grapes and fruit is alcohol, these wine farmers need to comply with many regulations designed for alcohol producers. The creation of farm winery legislation was to recognize the uniqueness and to remove unnecessary or excessive burdens from these wine farmers while still permitting the minimal control required. Unlike the "Factory" style operations of the Gallo's in the wine industry, the farm winery attracts tourists (customers) by their individualistic locations, structures, sales rooms, scenery, picnic tables, etc. Customers seem to have a picture of wineries in caves or subterranean cellars. In any case farm wineries must show the customer much "hand crafting" of their wines to win the customer's approval.

On ~~July~~^{Aug} 20, 1988, at a meeting between West Virginia Grape Growers, (WVGGA) the then WV Department of Health, WV Department of Agriculture, and the WV Farm Bureau, Dr. Heydinger, Health, and Gus Douglass, Agriculture, agreed that the proposed Health Department's sanitation rules be suspended until Health could resolve problems documented by the wine farmers. The documentation provided showed that the West Virginia proposed rules were contrary to good wine production practices used in sister states and around the world. WVGGA represents seven of the nine wineries in the state and, on numerous occasions has tried unsuccessfully to effect a meeting with the Health

people to correct hazardous and harmful aspects of the proposed sanitation rules. It appears that you have incorporated these same suspended sanitation rules into your emergency rule 175 series number 3 document verbatim and thus still uncorrected. This will cause irreparable damage to the infant farm winery industry and will provide a less safe product of lower quality to the public at still a greater cost.

With this background we hope you will consider our request to withdraw your emergency rule number 175 series 3 and series 4, and refile with a 180 day comment period. This would permit you time to effect the meeting with WVGGA representative and will not place the meeting during the terminal growth and harvest times dictated to the grape farmer by Mother Nature.

Because of several conflicts between the federal regulations of BATF and emergency rule 175 series number 4, it is recommended that the following be added as paragraph 2.1.40:

"2.1.40 West Virginia Farm wineries are exempted from the regulations contained herein."

Such wording would allow West Virginia Wine Farmers most of whom are not lawyers to review the fifty odd page June 19, 1990 section of the Federal Register titled Revision and Recodification of Wine Regulations; Final Rule. Considering the impact against the 56 pages of emergency rule number 175 series 3 and 4 while still trying to care for their grapes that Mother Nature brings to maturity during the next sixty days.

Specific comments... with the understanding that crosschecking between series 3 and series 4 of emergency rule number 175 and with 27 CFR Part 4 et al. have not been accomplished.

WV Form # 7 Title number 175, series number 3
While the purpose stated is to preclude confusion, review indicates some added confusion is created, see following.

Fiscal note implies no fiscal impact, yet 4.10 indicates that farm wineries need to duplicate federal registration of labels with the state. While the Federal government does not impose a charge on the winery, the state is requiring \$3.00 to cover their costs. It is unlikely that \$3.00 per label will cover the cost. With nine farm wineries in existence and several labels per winery, storage and monitoring will most certainly exceed the fee. In addition the fee should not be imposed on farm wineries in that federal registration is sufficient in sister states. It is requested that the basis for this duplication of label registration be researched and reviewed with the view of elimination to reduce the cost of state government administration and to avoid placing a competitive burden on WV Farm Wineries.

Further examination will reveal still more added cost impact on the operation of ABCC with no measurable control benefit.

for their control function.

&175-3-1. General

Cited enabling legislation is unavailable to WVGGA in the time frame of this review. Therefore, we need to reserve comments until such documents are reviewed.

&175-3-2. Definitions [format differs from &175-3-1.]

2.1 talks about alcoholic liquors but 2.3 excludes the product of the farm wineries. Why even talk about alcohol liquors in a farm winery rule since farm wineries do not produce any thing but the excluded wine?

2.6 "Distilled spirits" again this is not the produce of farm wineries

2.7 Distributor ditto

2.8 uses the off-farm location concept as a location for growing grapes or fruit for wine production with only one off-farm location permitted. This would seem to preclude the buying of grapes from West Virginia growers that do not have a winery nor wish to go through the expense and paper work required by a winery operation. This narrow view seems to defeat the purpose of trying to stimulate state agriculture development.

2.9 "Fortified wine" includes dessert wine but in fact would not be so classified, in many cases dessert wine is not fortified and then BATF and the federal regulations would not state they are fortified. There are numerous other conflicts that would be apparent with time for a full review.

2.10 "Importer" for farm winery operations this seems to be more boilerplate for the lawyers rather than the wine farmer since farm wineries would be precluded in normal business from alien wines.

2.11 "Intoxicated" should be specific according to federal or other West Virginia law...ie. blood alcohol level of ... or breathlyser reading of... rather than a subjective description.

2.13 "Manufacture" talks of alcoholic liquor but the product of the farm winery is excluded from this category in 2.3. appears like more boilerplate for the lawyers.

2.14 while applicable to farm winery includes confusion factors by also identifying non farm winery aspects. more lawyer boilerplate.

2.15 again exclude farm winery operation since it states original package.....holds alcoholic liquor

This same feeling of not knowing what a farm winery is carries on throughout the emergency rule.

Hoping onward: &175-3-3 Licensure.

While you utilize Federal BATF information, you have added extra requirements not originally in farm winery licensure such as 3.1.11, 3.1.7, 3.1.6. This not only requires duplication of federal documentation but also conflicting information. The State of West Virginia needs to save money and should normally consider using established federal paper work to avoid added expense to the state.

Further duplication continues to be expensively highlighted in 3.2.2 ...a thorough investigation after the tight screening by the feds seems to be a costly duplication and possible harassing situation rather than a stimulus to the agriculture and state economy.

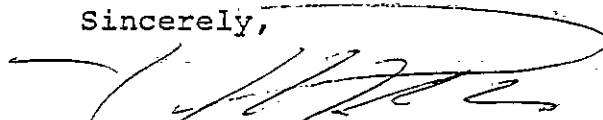
3.6 then says send in the a copy of the applicant's federal basic permit. Why if you are going to do your own investigation?

3.9 Believe Internal Revenue laws might better read: "BATF regulations of the United States."

Mr. Camper what we are trying to say is that there are enough justifications available for you to consider a delay in processing these emergency rules. Since it has been eighteen months since the legislation most recently impacting on the farm wineries we would recommend a withdrawal of emergency rule 175 series 3 and series 4 until after harvest when we will be able to assist you in the ~~best possible rules to protect~~ the public and still permit development of the farm winery sector of the West Virginia economy. Figures in sister states indicate that for every dollar spent at a farm winery results in as much as \$47.65 added to the state economy. Please assist us in help to the economy and maybe we can assist in producing an efficient sector for your alcohol beverage people to control.

Since the first six pages plus cover pages have almost two and a half pages of comment maybe the ABC, Agriculture Department and WVGGA could use added time to produce a livable rule for all West Virginians. Please let us know how we can cooperate with your people.

Sincerely,



Robert F. Pliska
Executive Secretary



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

State Capitol
Charleston, WV 25305

Cleve Benedict
Commissioner

August 2, 1990

The Honorable Harry Camper
Commissioner
Alcohol Beverage Control Commission
P. O. Box 4047
Charleston, West Virginia 25304

Dear Commissioner Camper:

We certainly appreciate the opportunity to comment on the proposed rules as they apply to farm wineries. I would like to compliment you and your staff on a fine job in developing these rules to implement the legislation passed by the 1989 Legislature in support of the West Virginia farm wines industry.

In general, I believe that the regulations are supportive, however, I would like to make a few points regarding the rule. I will try to make my points paragraph by paragraph so that they are easily followed.

In Section 2.8, there is a typographical error in the definition of a farm winery. Lines 3 and 4 should read "fermentation of grapes and other fruit or honey with 25% of the raw products being produced by the owner of such farm winery on the premises of that establishment and no more than 25% of such produce originating from any source outside the state provided. . ." Since this language was taken directly from the law, it appears this is simply a typographical error.

Section 2.25 causes me a bit more concern. I do not believe that the definition of a wine tasting is included in the law. I am not sure why it is now written to specifically include farm wineries. Under this definition, a West Virginia Grape Growers Association would be required to purchase a \$50, one time, wine tasting license for their annual meeting when wines are tasted. Also, many other organizations around the state conduct wine tastings which promote West Virginia wines. I would suggest an exemption from this fee be included when the tastings are exclusively of West Virginia produced wines from licensed farm wineries. This would allow for the promotion of this agricultural industry without the increased burden of a \$50 license each time a wine tasting was held.

August 2, 1990

Section 4.5 raises the question whether it would be a prohibited act for the owners of a winery to have wine with their dinner in rooms directly connected to the farm winery. Several of the farm wineries around the state are located in or connected to the owner's residence. I think perhaps some change needs to be made in this paragraph.

Apparently there is also a typographical error in paragraph 4.6. I believe it should read "wine tastings" not "wine testings".

Several areas in Section 5 also are of some concern. This is based in part by the fact that a meeting was held between the wineries and the West Virginia Department of Health when the question of Health Department Inspection of farm wineries first came to light and ended with an agreement between the wineries and the Health Department to mutually work on criteria to be used for the sanitation inspections of farm wineries. As best I can ascertain, West Virginia farm wineries were not afforded an opportunity to review these criteria in any detail.

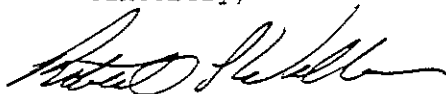
Paragraph 5.8 mandates that all employees of farm wineries have a physical examination with their records on file. While this is probably not such a bad idea, it does seem to be a bit of an overkill in requiring a physical examination and certificate. I believe that a simple statement that no person suffering from contagious or infectious diseases shall work in a licensed place of business in the manufacturing or bottling of wine would be sufficient or requiring a food handlers license might also accomplish the goal.

Section 5.91 is probably the most devastating to our farm wineries and this is an area where there was some agreement between the Health Department and the wineries that this clause would not be included. Washing and rinsing grapes in potable water is an impractical and could be damaging to the wine making process in that it removes native yeast which are important in the development of unique wines.

I do hope that you will take an opportunity to review these comments in the light in which they are intended. Our farm wineries have the potential to develop into a viable and vibrant industry and we all must work together for that goal to be accomplished.

I will be happy to discuss any of my comments with you at your convenience.

Sincerely,



Robert L. Williams
Director
Marketing & Development Division

CONFIDENTIAL

5.2.6... OR DRYING DEVICES AND ARE PARTITIONED OFF FROM THE WINEYARD WITH DOORS.

5.4.2... SHALL NOT BE MADE SOLELY OF PAPER NOR SHALL ANY MATERIAL MADE OF LEAD OR LEAD COMPOSITION BE USED.

5.5.3 ... RINSING WITH WATER. THE OUTSIDE OF ALL...

5.6 ... SCRUBBED, MOPPED, OR FLUSHED AND SHALL BE KEPT CLEAN AND FREE...

5.8 ... BOTTLING WINE IN OR AROUND THE LICENSED PREMISES TO HAVE A CURRENT FOOD HANDLER'S CERTIFICATE ON FILE.

5.9.1 ... AND SUITABILITY FOR PROCESSING, AND PROTECTED FROM CONTAMINATION DURING PROCESSING.

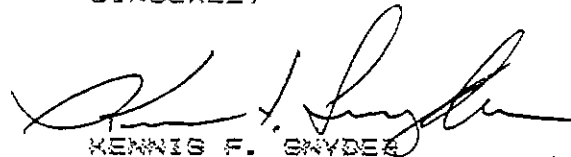
5.9 ... ANY BILLBOARDS IN PLACE PRIOR TO THE ADOPTION OF THIS REGULATION NEED NOT BE CHANGED.

7.2 ... UNDER THE AGE OF TWENTY-ONE (21) YEARS EXCEPT AN IMMEDIATE FAMILY MEMBER OF THE OWNER SHALL BE EMPLOYED FOR...

7.5.3 ... PROVIDED BY REGULATIONS OF THE BUREAU OF ALCOHOL, TOBACCO & FIREARMS.

8.1... WHEN DEMAND OF THE COMMISSIONER FURNISH SAMPLES OF ANY WINES... THE FARM/WINEYARD LICENSEE SHALL BE REIMBURSED FOR THE SAMPLES SO FURNISHED AT THE RETAIL PRICE WITHIN FIFTEEN (15) DAYS. THANK YOU FOR YOUR COOPERATION.

SINCERELY



KENNIS F. SNYDER

KFB:KDB

SCHNEIDER'S WINERY
P.O. BOX 1956
ROMNEY, WV 26767
(304) 822-8944

ALCOHOL BEVERAGE CONTROL COMMISSIONER
P.O. BOX 4047
CHARLESTON, WV 25304

RE: EMERGENCY RULE TITLED, "RETAIL SALE OF WINE IN GROCERY STORES, WINE SPECIALTY SHOPS AND PRIVATE WINE RESTAURANTS". TITLE NUMBER 175 SERIES 4 DATED JULY 3, 1980.

GENTLEMEN:

THE FOLLOWING CHANGES ARE RECOMMENDED:

PARA 2.1.10... FIRM OR CORPORATION EXCEPT FARM WINERIES LICENSED...

PARA 2.1.33... OR SUPPLIER OF WINE EXCEPT FARM WINERIES WHO SELL...

PARA 2.1.35 DELETE ... OR WINE PRODUCED FROM THE GRAPES OF A PARTICULAR HARVEST IN A PARTICULAR REGION OF PRODUCTION.

PARA 2.1.36... NOT LESS THAN THREE PERCENT (3%) NOR MORE THAN TWENTY-FOUR PERCENT (24%)...

6 175-4-3

3.1... ALL SUPPLIERS EXCEPT FARM WINERIES ARE REQUIRED...

3.2.1... SUPPLIERS EXCEPT FARM WINERIES ARE REQUIRED TO...

3.3... INVOICES REQUIRED; COPIES TO COMMISSIONER; CONTENT. EXCEPT FOR FARM WINERIES ALL SUPPLIERS WILL PREPARE TWO (2) COPIES...

4.12... SUPPLIER OR FARM WINERY TO A LICENSED...

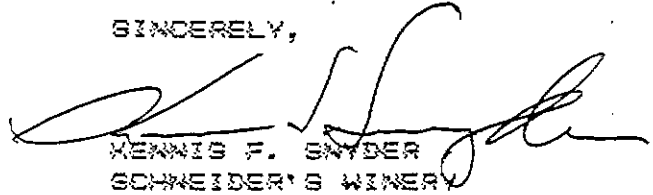
5.14... INVENTORY OF WINE ACCESSORIES. WINES MANUFACTURED IN WEST VIRGINIA ARE EXCEPTED FROM THIS PARAGRAPH.

6.14.C... SPECIAL LICENSE SHALL BE SEVEN DOLLARS AND FIFTY CENTS (\$7.50).

CON'T

THANK YOU FOR YOUR CONSIDERATION.

SINCERELY,



DENNIS F. SNYDER
SCHWEIDER'S WINERY

KFB: PPS

Schneider's



Winery

SCHNEIDER'S WINERY

"JERSEY MT. ROAD"

P.O. BOX 1950

ROMNEY, WV 26757

(304) 822-5944

July 26, 1990

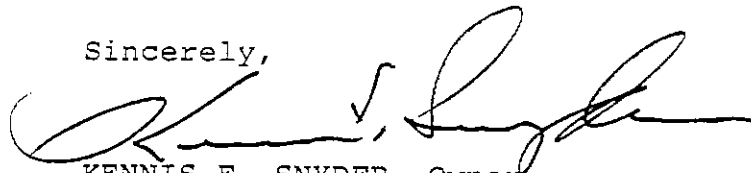
Alcohol Beverage Control Commissioner
P.O. Box 4047
Charleston, WV 25304

Gentlemen:

Enclosed next under is a copy of an unsolicited request for a "Wine Tasting" to be held at Morgantown, WV. This is typical of the "Wine Tasting" requests received from various civic organizations, fund raising groups, etc.

The farm wineries of West Virginia cannot afford to pay a fee to travel half way across the State to give their wine away in promoting, not only their wine but other West Virginia products and the state itself. At the vast majority of these events wine is not sold, therefore there is no income to the winery owner. To charge the wineries for the priviledge of giving away wine and promoting their product is to greatly shackle and impede a new industry so desperately needed in West Virginia.

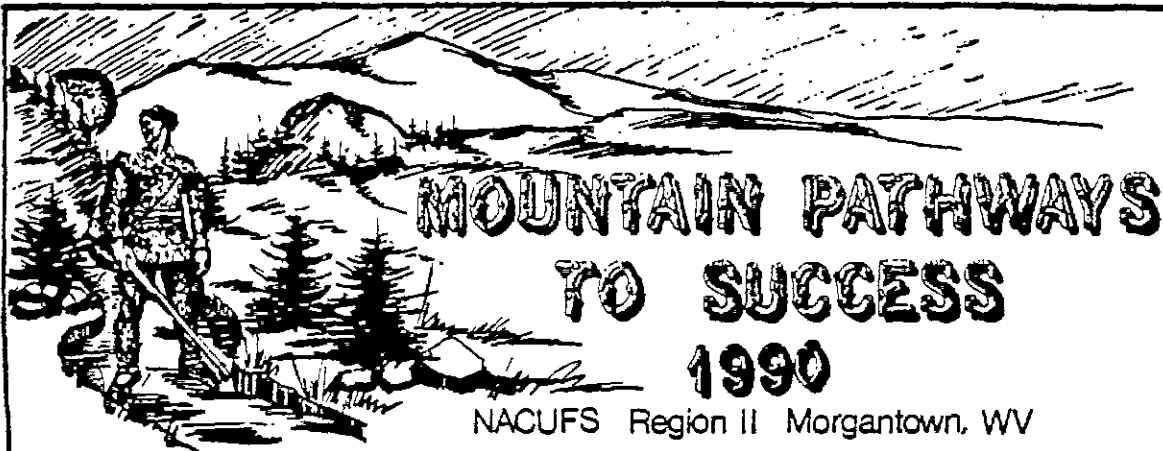
Sincerely,



KENNIS F. SNYDER, Owner
Montani Semperi Liberi
President West Virginia Grape Growers Assoc.

KFS:ngs

2 Incl



July 21, 1990

Mr. Ken Snyder, President
West Virginia Grape Growers Association
Box 1950
Romney, West Virginia 226757

Dear Ken:

I hope this letter finds you in good health, and in a prosperous wine season. As we discussed, I am writing to request that you and the other vinters come to our National Association of College and University Food Service Regional on November 27, 28, & 29th, 1990 here at the Mountainlair. We would like for you to put on a wine and cheese tasting seminar, that would be comprehensive, informative and fun. The audience that you would be speaking too are all food service professionals from colleges all over the mid-eastern seaboard.

We have tentatively slated you in for Wednesday, November 28, 1990 at 3:00 pm to allow you time to set up, as well as travel time, and other arrangements you may need. This seminar is being featured as a highlight of the day. Many of the college food service directors that we have contacted have already expressed a great deal of interest, and are awaiting this seminar with enthusiasm.

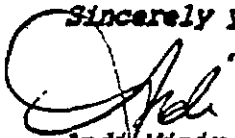
All of the overnight accomodations, for you and the other vinters will be again at the Ramada Inn, at no charge to you. As before, when you were here with the Chef's Association, any food products, you need, (breads, crackers, etc,) will be provided. Again, as before, if you let me know what your glass requirements, and linen requirements will be before the seminar, and the cost involved to us, as far in advance as possible, I will appreciate it.

Were you going to contact the persons that manufacture cheeses here in West Virginia, or do you have a list of persons that I could use to do so? I remember us talking about it at the SOS, but did not write any information down, and my recall facilities are not so good!!!!

We are looking forward to your seminar, and I hope you will enjoy yourself while you are here. If you would like to attend the entire conference, or take part in the show case to display your wines, and those of the other growers in the association, please let me know and I will take care of those arrangements.

This will be a great opportunity for you to promote the great state of West Virginia and its wines, and I look forward to working with you again.

Sincerely yours,



Andi Minix, Executive Chef
West Virginia University
Host Coordinator NACUPS II
Regional



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

State Capitol
Charleston, WV 25305

Cleve Benedict
Commissioner

August 3, 1990

The Honorable Harry Camper
Commissioner
Alcohol Beverage Control Commission
P. O. Box 4047
Charleston, West Virginia 25304

Dear Commissioner Camper:

In addition to our previous comments regarding the emergency rules filed dealing with farm wineries, we would like to make one additional comment. It deals with paragraph 8.1 where the Commissioner is allowed to, without cost and upon demand, collect samples from the farm wineries. The West Virginia Department of Agriculture, and it is my understanding the Food and Drug Administration, pay for samples collected for the purposes of analysis. It is our concern that samples could be collected for each variety and each blend of wine and that this could amount to a fairly significant loss to the farm wineries. I believe that the Alcohol Beverage Control Commission should be required to pay the wholesale cost for the wines for the purposes of samples.

We appreciate your consideration in this matter. I would be happy to discuss it at your convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert L. Williams".

Robert L. Williams
Director

Marketing & Development Division

RLW/cjc